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September 3, 1999

VIA OVERNIGHT DELIVERY

Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

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Re: Arizona 271 Proceeding, Docket No. T-000000-97-238

To the Commission:

Enclosed please find AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") Preliminary Statement of Positions and Comments on Bifurcation of the Proceeding.

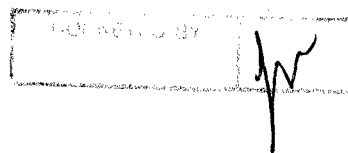
Please feel free to contact me if you have any questions or comments.

Very truly yours,

AT&T COMMUNICATIONS, INC. OF
THE MOUNTAIN STATES AND TCG
PHOENIX

Arizona Corporation Commission
DOCKETED

SEP 6 7 1999



Richard S. Wolters

Attachment

cc: Certificate of Service

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK

Chairman

JAMES M. IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S

COMPLIANCE WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

) DOCKET NO. T-00000199-238

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**AT&T AND TCG'S PRELIMINARY STATEMENT
OF POSITIONS AND COMMENTS ON BIFURCATION OF THE PROCEEDING**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") hereby submit, in accordance with the Procedural Order issued by the Commission on July 22, 1999, their preliminary statement of positions regarding U S WEST Communications, Inc.'s ("U S WEST") compliance with the competitive checklist contained in Section 271 of the Telecommunications Act of 1996 ("Act"). AT&T also hereby submits, in accordance with the Procedural Order issued by the Hearing Officers on August 27, 1999, its responses to the questions posed by the Hearing Officer on the desirability of bifurcating the proceeding to address issues unrelated to Operations Support Systems ("OSS") and related scheduling issues.

I. PRELIMINARY STATEMENT OF POSITIONS

CHECKLIST ITEM NO. 1: Interconnection in accordance with the requirements of Section 251(c)(2) and 252(d)(1).

Pursuant to Section 251(c)(2), U S WEST must provide interconnection for the transmission and routing of telephone exchange service at any technically feasible point in its network that is at least equal in quality to the interconnection provided to itself, any affiliate,

subsidiary or any other party which U S WEST provides interconnection. Moreover, the rates, terms and conditions upon which U S WEST offers interconnection must be just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the interconnection agreements and the requirements of Sections 251 and 252.

Pursuant to Section 251(c)(6), U S WEST has the duty to provide physical collocation for equipment necessary for interconnection at the premises of the local exchange carrier on rates, terms and conditions that are just, reasonable and nondiscriminatory. U S WEST may provide virtual collocation if it demonstrates to the Arizona Corporation Commission that physical collocation is not practical for technical reasons or because of space limitations. Pursuant to Section 252(d)(1), rates for interconnection shall be 1) based on cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing interconnection; 2) nondiscriminatory; and 3) may include a reasonable profit.

Response: U S WEST does not comply with the requirements of Checklist Item No. 1 because U S WEST does not allow interconnection at any technically feasible point. Instead, for example, U S WEST requires that interconnection be provisioned through some form of intermediate distribution frame (known variously as a Single Point of Termination “SPOT” frame, or an Interconnection Distribution Frame “ICDF” frame) between a CLEC’s collocated facilities and U S WEST’s facilities. It is technically feasible to interconnect at many points other than a SPOT or ICDF frame. Moreover, U S WEST has refused to allow interconnection at its access tandems, even though such interconnection is technically feasible and may be more efficient than other forms of interconnection.

U S WEST has not proven that it is providing interconnection at a level of quality at least equal to the level that it provides to itself or to other parties. U S WEST has failed to produce key performance measurement results data for the performance it provides to itself for interoffice transport circuits (*i.e.*, average installation interval, mean time to repair, percent installation commitments met). Consequently, it is impossible for U S WEST to demonstrate that the interconnection performance it provides to CLECs is at least equal to the performance it provides to itself or to other parties.

In addition, U S WEST has produced evidence that shows that it is not providing interconnection to CLECs that is at least equal in quality to that which it provides to itself. As an initial matter, the requirement of an ICDF or SPOT frame for interconnection necessarily degrades the quality of interconnection for CLECs. Further, U S WEST has taken significantly longer to provision interconnection trunks for CLECs than it has to provision switched access trunks for long distance providers. Interconnection trunks and switched access trunks are essentially the same type of circuit. This is one indication that U S WEST is failing to provide interconnection on nondiscriminatory terms. Also, U S WEST has produced evidence that shows CLECs are experiencing lower call completion rates and higher blocking rates than exist in U S WEST's own network. These excessive blocking rates are evidence that U S WEST failed to adequately prepare its network for interconnection.

There are also a number of problems with the time and manner in which U S WEST offers collocation. For example, contrary to the requirements of the FCC, U S WEST will not allow the collocation of Remote Switching Units ("RSUs") and other types of equipment that can be used for both interconnection and other purposes. U S WEST has also refused to offer collocation in all of the premises required by state and federal law. U S WEST does not offer shared collocation and requires collocators to pay for at least 100 square feet of caged collocation space. U S WEST also refuses to allow CLECs to sublet space in U S WEST's collocation areas and will not allow CLECs to cross connect between each other. In addition, the time required to obtain collocation space from U S WEST is too long and does not provide an efficient competitor with a meaningful opportunity to compete. U S WEST frequently fails to meet its commitments in responding to collocation feasibility studies, collocation quotations and collocation installations.

U S WEST has also imposed upon CLECs excessive and non-cost based, non-recurring charges for collocation. U S WEST requires that many of the collocation charges be individually negotiated, increasing the time required for a new entrant to obtain collocation facilities. These and other problems prevent U S WEST from meeting the requirement that it provide collocation on rates, terms and conditions that are just, reasonable and non-discriminatory.

CHECKLIST ITEM NO. 2: Nondiscriminatory access to network elements in accordance with the requirements of Section 251(c)(3) and 252(d)(1).

Pursuant to Section 251(c)(3), U S WEST must provide nondiscriminatory access to network elements at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the interconnection agreements and the requirements of Sections 251 and 252. U S WEST must also provide network elements in a manner that allows the requesting carrier to combine them to provide a finished telecommunications service.

Pursuant to Section 251(c)(6), U S WEST has the duty to provide physical collocation for equipment necessary for access to unbundled network elements at the premises of the local exchange carrier on rates, terms and conditions that are just, reasonable and nondiscriminatory. U S WEST may provide virtual collocation if it demonstrates to the Arizona Corporation Commission that physical collocation is not practical for technical reasons or because of space limitations.

Pursuant to Section 252(d)(1), rates for access to unbundled network elements shall be 1) based on cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing network elements; 2) nondiscriminatory; and 3) may include a reasonable profit.

Response: U S WEST is not meeting the conditions of this checklist item for several reasons. U S WEST is not providing nondiscriminatory access to network elements at any technically feasible point. U S WEST has refused to provide access to network elements in combination in defiance of Supreme Court rulings and FCC orders. In addition to this policy on combinations, U S WEST has required the use of intermediate frames to access unbundled elements. U S WEST has refused to allow CLECs to interconnect directly to U S WEST frames and equipment where U S WEST commonly accesses network elements for its own use and for

provisioning service to its customers. U S WEST has also proposed new tariffs that would limit CLEC access to large apartment complexes and other multiple dwelling units (“MDUs”), as well as malls and other developments. This could prevent CLECs from having access to many customers by denying access to certain customer loops and network interconnection points. These and other examples of U S WEST policies demonstrate that U S WEST is not providing access to UNEs at any technically feasible point. *See* response to Checklist Item 1 for a description of the deficiencies regarding access to unbundled network elements through physical collocation pursuant to Section 251(c)(6).

U S WEST also has not proven that it is providing nondiscriminatory access to its operations support systems (“OSS”). U S WEST’s current design of its IMA interface for pre-ordering, ordering and provisioning, and maintenance and repair make it impossible for the IMA interface to provide nondiscriminatory access to U S WEST’s OSS. IMA has: 1) missing functions that the FCC has stated are required to be provided to CLECs; 2) functions that are provided to CLECs in a manner that is inferior to the manner that U S WEST provides the same functions to its retail operations; 3) orders placed through the IMA interface do not flow-through and require manual intervention by U S WEST on every order; and, 4) IMA cannot be electronically integrated with CLECs’ own OSS. In addition, the time to receive responses to pre-order queries placed through IMA is significantly longer than the time for U S WEST retail representatives to receive the same or similar responses.

U S WEST also claims to have available electronic data interchange (“EDI”) interfaces for pre-ordering and ordering and electronic bonding trouble administration (“EB-TA”) interfaces available for maintenance and repair functions. However, U S WEST’s version of an EDI interface, unlike that recognized as standard by the industry, does not allow electronic flow-

through of orders. Additionally, U S WEST has not produced reliable evidence that the EDI and EB-TA interfaces have gone through any robust third-party, carrier-to-carrier or internal testing. Without reliable evidence of commercial usage or adequate testing, U S WEST cannot demonstrate that its EDI and EB-TA interfaces offer CLECs non-discriminatory access to its OSS.

U S WEST also has an inadequate set of measures and processes to gauge the quality of the OSS access that it provides to CLECs. While U S WEST has proposed some measures, U S WEST's proposal is flawed in several respects. First, U S WEST's data collection, analysis and reporting processes are unreliable. U S WEST's process for collecting, analyzing and reporting performance measurement results in its Section 271 application include many ad hoc, manual and undocumented processes. The haphazard manner in which U S WEST treats its data calls in to question the reliability of any conclusions based on that data. A systems readiness audit should be performed on U S WEST's data collection, analysis and reporting processes to determine how much – or how little – faith should be placed in U S WEST's reported performance results data.

Second, U S WEST has failed to develop many of the OSS performance measures that the FCC has determined are required. U S WEST claims that some of the missing measures are under development. Other measures, U S WEST leaves completely unaddressed. U S WEST must produce results for the complete list of FCC required performance measurements before U S WEST can be considered to have provided nondiscriminatory access to its OSS.

Third, U S WEST's proposed list of measures excludes far too much relevant data. For example, U S WEST's measurement definition for order status and order quality measurements (*i.e.*, average time to receive a firm order confirmation (“FOC”) and percent of orders rejected)

excludes orders received through non-electronic means (fax, mail and courier). Yet U S WEST's own data shows that more than half of the orders it has received have come through non-electronic means. U S WEST's exclusion of too much relevant data prevents the Commission from getting a complete picture of the performance that U S WEST is providing to CLECs.

Fourth, for many performance measures, U S WEST has failed to produce required data on the performance it provides to itself. The essence of U S WEST's nondiscrimination obligation is parity. To determine if parity exists, results of U S WEST's performance to CLECs must be compared to U S WEST's performance to itself. Given that U S WEST has not produced the required data on the performance it provides to itself, a parity conclusion is impossible to make.

Fifth, when U S WEST does fail to provide nondiscriminatory services to CLECs, its proposal for self-executing remedies is unreasonable, unworkable and is anything but self-executing. U S WEST's proposal requires a determination that a difference between CLEC results and U S WEST results are statistically, materially and operationally significant for three consecutive months before it will take any action on that particular measure. While U S WEST has a proposal on how to determine statistical significance; how to determine operational and material significance is undefined and totally subjective. U S WEST has recommended that operational and material significance be determined on a case-by-case basis. The uncertainty and subjectiveness of U S WEST's proposal will only lead to many time consuming and costly disputes debating whether a difference is materially or operationally significant. U S WEST's self-executing remedies proposal is neither self-executing nor a remedy.

In addition, the prices U S WEST offers for unbundled network elements are based on embedded costs. U S WEST has also failed to offer pricing for combinations of network

elements and has not offered de-averaged rates for unbundled loops. For these and other reasons, U S WEST cannot meet its burden to show compliance with Checklist Item No. 2.

CHECKLIST ITEM NO. 3: Nondiscriminatory access to the poles, conduits and rights-of-way owned or controlled by U S WEST at just and reasonable rates in accordance with the requirements of Section 224.

Response: U S WEST, in new tariff filings, has attempted to gain exclusive control of access to MDUs, malls, and other campus type developments. This exclusive control may prevent CLECs from having nondiscriminatory access to poles, conduits and rights-of-way controlled by U S WEST.

CHECKLIST ITEM NO. 4: Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

Response: U S WEST does not provide unbundled loops at any technically feasible point and fails to provide loops of the same quality as those U S WEST uses to provide services to its own customers. In some cases, U S WEST is refusing to provide access to the complete loop, claiming that part of the loop is "inside wire." U S WEST has also put illegal restrictions on the use of unbundled loops and double charges for providing conditioned loops. U S WEST policies also improperly restrict access to loops provisioned using Integrated Digital Loop Carrier ("IDLC").

Despite the FCC's requirement to do so, U S WEST has failed to produce performance results data on the retail analogue of the maintenance and repair of unbundled loops. This failure alone precludes a conclusion that U S WEST is providing nondiscriminatory access to unbundled loops. Again, despite clear direction from the FCC, U S WEST has also failed to demonstrate

that the provision of unbundled loops to CLECs is done in a manner that provides a CLEC with a meaningful opportunity to compete.

The unbundled loop data that U S WEST has provided shows that, on average, U S WEST never meets its unilaterally defined standard installation intervals for unbundled loops. The data also shows that U S WEST meets its commitments to CLECs for unbundled loop orders less frequently than it does for similarly situated Plain Old Telephone Service (“POTS”) customers. These and other problems prevent U S WEST from meeting the requirements of Checklist Item No. 4.

CHECKLIST ITEM NO. 5: Local transport from the trunk side of U S WEST’s switch unbundled from switching or other services.

Response: U S WEST has failed to comply with the requirement that it offer non-discriminatory access to local transport. U S WEST continues to refuse to offer shared transport as a network element, instead defining it as an “Ancillary Service” (in its Statement of Generally Available Terms (“SGAT”)). As a result, U S WEST refuses to offer cost-based pricing for shared transport, instead charging approximately twenty times more than cost for this element. No new entrant could make use of U S WEST’s shared transport offering in its SGAT to effectively or meaningfully compete with U S WEST in the provisioning of local service.

U S WEST’s dedicated transport offering also does not comply with the requirements of the Act. U S WEST has limited the facilities to which a new entrant may connect dedicated transport to transmission paths between U S WEST’s wire centers, not to other facilities, such as end offices and tandem switches.

There does not appear to be any significant usage by CLECs of U S WEST’s local transport. Absent such commercial usage, U S WEST should have provided evidence of third-

party, carrier-to-carrier or internal testing to demonstrate that it is capable of providing unbundled transport to CLECs at a level of quality equal to that which U S WEST provides to itself and in quantities that CLECs may reasonably demand. U S WEST failed to put forth any credible testing evidence of its ability to provide, maintain and repair unbundled transport for CLECs. These failures and other discriminatory policies prevent U S WEST from meeting the requirements of Checklist Item No. 5.

CHECKLIST ITEM NO. 6: Local switching unbundled from transport, local loop transmission, or other services.

Response: U S WEST has failed to comply with the requirement of nondiscrimination in its offering of unbundled switching for several reasons. For example, U S WEST has failed to offer all of the features of the switch and has failed to offer vertical features at cost-based prices. U S WEST has also failed to offer all of the operations and systems capabilities of the switch to CLECs. Finally, U S WEST's refusal to offer unbundled switching as a combination with unbundled loops and unbundled shared transport has been such a serious impediment to local competition that none of the CLECs in Arizona have yet ordered unbundled switching.

Absent such commercial usage, U S WEST could have provided evidence of third-party, carrier-to-carrier or internal testing to demonstrate that it is capable of providing unbundled transport to CLECs at a level of quality equal to that which U S WEST provides to itself and in quantities that CLECs may reasonably demand. U S WEST failed to put forth any credible testing evidence of its ability to provide, maintain and repair unbundled switching for CLECs.

CHECKLIST ITEM NO. 7: Nondiscriminatory access to 1) 911 and E911 services; 2) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and 3) operator call completion services.

Response: U S WEST does not provide nondiscriminatory access to 911/E911. For example, U S WEST's SGAT does not obligate it to provide nondiscriminatory access to 911/E911 services with the same reliability that U S WEST's customers enjoy. In addition, the U S WEST requirement for unnecessary intermediate frames and additional cable splicing in provisioning trunking used for 911/E911 increases the risk of failure for CLEC customers. Moreover, problems in U S WEST's provisioning of number portability and CLEC NXX prefixes in Arizona raises the possibility of serious 911 problems.

U S WEST has also, contrary to FCC guidance, failed to provide any evidence on the accuracy of 911 database updates it performs for its own customers. Without this data, it is impossible to conclude that U S WEST maintains its 911 databases with the same accuracy for CLEC data as it does for its own data. These and other problems prevent U S WEST from providing 911/E911 service to CLECs in a non-discriminatory manner.

CHECKLIST ITEM NO. 8: White pages directory listings for customers of the other carrier's telephone exchange service.

Response: U S WEST has refused to enter into any legally binding commitment to meet the requirements of Checklist Item No. 8. Instead, U S WEST relies upon U S WEST DEX to comply with those requirements. U S WEST DEX is not a party to any interconnection agreement, the U S WEST SGAT, or to these Section 271 proceedings. In addition, it appears that U S WEST may be treating listings made for the customers of new entrants in a manner that is not equal to the way in which its own listings are treated. For these and other reasons, U S WEST does not meet the requirements of Checklist Item No. 8.

CHECKLIST ITEM NO. 9: Nondiscriminatory access to telephone numbers and compliance with numbering administration guidelines, plans or rules.

Response: U S WEST has failed to meet the requirements of Checklist Item No. 9 because it is forcing CLECs to apply for additional, unnecessary NXX prefixes for number portability.

CHECKLIST ITEM NO. 10: Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

Response: U S WEST is not offering the CLECs nondiscriminatory access for the interchange of signaling information in conjunction with the routing of local calls. U S WEST has improperly merged signaling for interconnection with signaling as an unbundled element in its SGAT. Moreover, U S WEST states it will not offer signaling as an unbundled element, at cost-based rates, unless the FCC determines on remand that signaling is a UNE. For these and other reasons, U S WEST cannot meet its burden to show compliance with Checklist Item No. 10.

CHECKLIST ITEM NO. 11: Interim number portability through remote call forwarding, direct inward dialing trunks or other comparable arrangements, with as little impairment of functioning, quality, reliability and convenience as possible, and provision of long term number portability in full compliance with the Federal Communications Commission's regulations.

Response: U S WEST is not meeting its responsibilities with respect to local number portability ("LNP"). For example, U S WEST has imposed a cumbersome process of transferring ("porting") numbers and has imposed limitations on how many numbers may be ported per day to CLEC customers. Perhaps because of these cumbersome procedures, many calls to ported numbers held by CLEC customers are failing. In addition, U S WEST procedures

do not allow new entrants to port numbers except during business hours. Many customers, particularly business customers, require that such transfers occur outside of business hours. U S WEST's policy, therefore, limits the ability of new entrants to attract such customers.

U S WEST's performance in providing and maintaining interim number portability in Arizona has been terrible. The U S WEST reported "commitments met" and "average installation interval" results data show that U S WEST rarely provisions interim number portability as promised. Additionally, the rate of troubles on U S WEST number portability installations is excessive.

U S WEST has failed to put forth any data on the manner in which it provides local number portability to CLECs. Without such data, it is impossible to determine if U S WEST is meeting its obligations with respect to number portability. These and other problems are interfering with the ability of new entrants to provide competitive local service and prevent U S WEST from meeting the requirements of Checklist Item No. 11.

CHECKLIST ITEM NO. 12: Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3). Pursuant to Section 251(b)(3), U S WEST must provide dialing parity to competing providers of telephone exchange service and telephone toll service and permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listing, with no unreasonable dialing delays.

Response: At this time, AT&T is unaware of any problems associated with dialing parity.

CHECKLIST ITEM NO. 13: Reciprocal compensation arrangements for the transport and termination of telecommunications in accordance with the requirements of Section 252(d)(2). Pursuant to Section 252(d)(2), the rates, terms and conditions for reciprocal compensation shall not be considered just and reasonable unless the terms and conditions provide for mutual and reciprocal recovery of costs associated with transport of termination of

calls and such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

Response: U S WEST is failing to honor contract commitments for reciprocal compensation in Arizona. U S WEST is failing to pay AT&T and other CLECs reciprocal compensation amounts that are contractually due. For these reasons, U S WEST has not met the requirements of Checklist Item No. 13.

CHECKLIST ITEM NO. 14: Telecommunications services are available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3).

Pursuant to Section 251(c)(4), U S WEST must provide for resale at wholesale any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers and may not prohibit, or impose any unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service. Pursuant to Section 252(d)(3), the wholesale rates shall be determined on the basis of retail rates, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by U S WEST.

Response: U S WEST has failed to meet its obligation to provide for resale at wholesale rates certain services that it provides to its retail subscribers. In addition, the rates established for resold services are arbitrary and do not comply with the requirements of Section 252(d)(3) of the Act.

The data that U S WEST provided for the resale checklist item demonstrates that U S WEST is not providing resale services to CLECs at a level of quality at least equal to the level that it provides to its retail customers. Statistical analysis will be provided in AT&T's testimony that will demonstrate for a significant number of measures, that U S WEST is providing discriminatory service to CLECs. For these and other reasons, U S WEST has not complied with the requirements of Checklist Item No. 14.

II. HEARING OFFICERS' QUESTIONS ON BIFURCATION OF THE PROCEEDING

At the hearing held on August 27, 1999, U S WEST and the Staff jointly proposed to bifurcate OSS and non-OSS issues and proposed a procedural schedule to address non-OSS issues. The Hearing Officers denied the request without comment from the intervenors and requested that the intervenors address a number of issues regarding bifurcation in their preliminary statements due September 7, 1999. The Hearing Officers subsequently issued a Procedural Order August 27, 1999, confirming their earlier ruling and ordering the intervenors to respond to the following questions: 1) should non-OSS issues be bifurcated from OSS issues and proceed on a separate track? if not, why not? 2) if non-OSS issues are bifurcated, (a) what issues should be included in the non-OSS proceeding? (b) what schedule would you consider to be a reasonable schedule for the non-OSS proceeding?

A. The Proceeding Should Not Be Bifurcated.

Before making any decision to bifurcate the OSS and non-OSS issues, the Hearing Officers should determine and evaluate the benefits and problems inherent in such a decision. Initially, U S WEST and Staff proposed a schedule to bifurcate the proceedings without identifying the benefits of their proposal. The only benefits of the proposal suggested by U S WEST are contained in a letter dated August 26, 1999, from Mr. Timothy Berg, U S WEST's counsel, to Mr. Daniel Waggoner, counsel for NEXTLINK Arizona, Inc.¹ The benefits suggested by Mr. Berg are illusory.

¹ Mr. Berg also explained the benefits of bifurcation at the hearing held on August 27, 1999. Those benefits are generally contained in the letter to Mr. Waggoner. Staff never did articulate its reasons for proposing to bifurcate the proceedings.

First, Mr. Berg suggests that other states have bifurcated OSS and non-OSS issues, therefore demonstrating “that bifurcation is not only feasible, but preferable.” Mr. Berg refers to proceedings in New York, California, Texas and Nebraska. However, Mr. Berg provides no evidence that these states bifurcated OSS and non-OSS issues prior to holding hearings on all the checklist items. In Nebraska, for example, the initial round of hearings was held on all Section 271 issues. OSS remains an issue in Nebraska because the Nebraska Commission determined U S WEST failed to provide nondiscriminatory OSS.

In this case, U S WEST suggests that OSS issues be broken out before any hearings are held. Although AT&T would agree that it is *feasible* to bifurcate and address some of the checklist items that do not involve OSS issues, U S WEST provides no evidence or reasons to support its assertion that bifurcation is *preferable* to holding hearings on *all* Section 271 issues raised in its application.

U S WEST suggests that Arizona consumers will benefit because they will obtain the benefits of the Telecommunications Act of 1996 sooner if non-OSS and OSS issues are bifurcated. U S WEST provides no support for this suggestion. U S WEST cannot legally enter the in-region interLATA market in Arizona until U S WEST meets all the checklist items, including nondiscriminatory access to OSS. U S WEST provides no evidence or reasons to support its argument that holding hearings after the OSS testing is complete would cause “unnecessary delay.” To the contrary, holding hearings on all issues may be more efficient. The Nebraska Commission elected to hold a third round of hearings in the Section 271 proceeding on the issue of local number portability after receiving complaints against U S WEST. Holding hearings on non-OSS issues, therefore, may not provide finality on an issue.

U S WEST argues that the Hearing Division has other large dockets that have hearings set or will be set in early 2000. This issue is one of timing. U S WEST has not demonstrated an actual conflict between the Section 271 case and any docket which would necessitate holding hearings in December 1999. However, these proceedings and the intervening holidays do raise the question of whether the Hearing Officers would have the time to prepare a proposed order on the non-OSS issues and release the order prior to the hearings in the other proceedings or the hearings on the OSS issues. Furthermore, if the Hearing Officers do not intend to release a proposed order on the non-OSS issues, there is no reason to hold hearings on non-OSS issues. It is reasonable to presume that the passage of time would ultimately make it more difficult for the Hearing Officers to prepare their order on non-OSS issues.

There are a number of important reasons why the proceeding should not be bifurcated. These reasons are generally set forth in a letter dated August 25, 1999, from Mr. Daniel Waggoner to Mr. Timothy Berg. The two most more important reasons for not bifurcating the proceeding raised by Mr. Waggoner are duplication of testimony, preparation, travel and resources generally, and the need for U S WEST to update its filing to reflect the changes to its Arizona SGAT and the anticipated FCC UNE remand order.

U S WEST relies on its SGAT in an attempt to demonstrate that it meets the requirements of Section 271. U S WEST has stated in its response to data request AT&T/TCG 03-051 that it will make changes to its Arizona SGAT to incorporate provisions incorporated in its recently filed Nebraska SGAT; however, it has not decided which changes it will make and has stated that it will make those changes two weeks before intervenors' testimony is due. U S WEST should be required to update its SGAT and testimony to reflect its proposed changes before any decision to bifurcate the proceeding is made. Moreover, two weeks does not provide intervenors

sufficient time to review the changes and prepare testimony or propound discovery on issues raised by the changes.

U S WEST has taken the position that it does not have to provide certain network elements and combinations until the FCC issues its new list of network elements. U S WEST's SGAT also defines a number of network elements as ancillary services, based on the argument that, until the FCC releases its remand order, there are no network elements that U S WEST is obligated to provide under Section 251(c)(3). The FCC will release its UNE remand order in the near future. The matter is on the FCC's September 15th agenda. It is entirely reasonable to wait until the FCC issues its UNE remand order before a decision is made to bifurcate the proceeding. After the FCC releases its UNE remand order, it will be necessary for U S WEST to review the order and amend its application, testimony and SGAT to make them consistent with the order. If a schedule is imposed that requires intervenors to file testimony related to network elements prior to the release of the FCC's order and prior to U S WEST incorporating the results of the FCC's order in its filing, the intervenors will be justified in requesting leave to file rebuttal testimony in response to any subsequent testimony filed by U S WEST that incorporates the results of the FCC's UNE remand order.

If the proceeding is bifurcated, it will be necessary to provide more rounds of testimony and attend several rounds of hearings. These additional resource requirements will be imposed during the period the collaborative process and third-party testing of U S WEST's OSS are taking place. It will be difficult for small LECs to meaningfully participate in the collaborative process if it is required to draft and file testimony, respond to U S WEST data requests on that same testimony and prepare for and attend hearings while the collaborative process is on-going.

It is important that the small LECs remain able to meaningfully participate in this proceeding and the collaborative process.

U S WEST has not demonstrated why bifurcation is the most efficient and expedient procedure to follow in this case. It has only provided unsupported and unsubstantiated claims of benefits. When the proposed benefits are compared to the disadvantages, it is readily apparent that bifurcation would be a mistake and the burdens of bifurcation outweigh the alleged benefits.

B. Non-OSS Issues.

The Hearing Officers have asked the parties to provide comments on what issues should be included in a non-OSS proceeding if it is determined non-OSS issues should be addressed before the OSS issues. AT&T does not agree that the proceeding should be bifurcated. However, should the Hearing Officers elect to bifurcate the proceedings, only the following non-OSS issues should be addressed: Checklist Item 3 (poles, conduits and right-of-way); Checklist Item 7 (911, directory assistance and operator services); Checklist Item 8 (white pages); Checklist Item 9 (number administration); Checklist Item 10 (databases and signaling); Checklist Item 12 (dialing parity); and Checklist Item 13 (reciprocal compensation). All other checklist items are integrally related to nondiscriminatory access to OSS and should be addressed with OSS related issues, as should the remaining Section 271 issues (Track “A”, Section 272, and public interest).² Finally, all issues related to performance measures should be addressed with OSS issues. Staff’s own consultant has provided evidence of the relationship between OSS and performance measurements. *See* proposed Master Test Plan at 42-44, § 8.3, Performance Measurement Evaluation Coverage and Scenarios.

² The recent U S WEST/Qwest merger, the approval of that merger and any conditions imposed on the approval of the merger are closely related to the issues of Section 272 and whether it is in the public interest to grant U S WEST Section 271 relief.

C. Bifurcation Schedule.

If the Commission elects to bifurcate the proceeding with respect to the non-OSS issues identified by AT&T, it must adopt a schedule that initially requires U S WEST to update its SGAT and testimony to reflect the anticipated changes to its Arizona SGAT.³ If the intervenors are required to file testimony before U S WEST updates its testimony and SGAT, the schedule must provide for an opportunity to respond to any subsequent testimony filed by U S WEST that does change its SGAT.

AT&T would recommend that after U S WEST amends its filing to update its SGAT, the intervenors and Staff be provided 5 weeks to file rebuttal testimony, and U S WEST be provided five weeks to file surrebutal testimony.⁴ After the hearings on non-OSS issues are complete, the parties should be given three weeks to file post-hearing briefs on the non-OSS issues. The Hearing Officers should advise whether they intend to prepare a proposed order on the non-OSS issues.

II. CONCLUSION

The Procedural Order required AT&T to file a *preliminary* statement on each of the checklist items. AT&T has attempted to provide sufficient detail to enable the Hearing Officers to understand the deficiencies of U S WEST's application and why U S WEST fails to meet a particular checklist item. However, to the extent AT&T's preliminary statement may not have raised or addressed deficiencies in U S WEST's application, AT&T reserves the right to raise

³ If the Commission adds any checklist items addressing network elements (Checklist Items 2, 4, 5, and 6) to the list of non-OSS issues, it will be necessary for U S WEST to also update its filing to reflect the FCC's UNE remand order.


⁴ U S WEST and Staff's proposal would have allowed intervenors and staff six weeks to file testimony and U S WEST six weeks to file rebuttal testimony. If the Hearing Officers add additional issues to those non-OSS issues proposed by AT&T, the Hearing Officers should allow six weeks for the parties to file testimony.

any and all deficiencies in its testimony filed in this proceeding. AT&T also incorporates by reference its response to Attachments A and B to the Procedural Order dated May 27, 1997. Many of the questions contained in Attachments A and B address U S WEST's compliance with the competitive checklist contained in Section 271 of the Act.

The Procedural Order issued August 27, 1999, also required the parties to address the issue of bifurcating the proceeding and establishing a schedule to address non-OSS issues. AT&T opposes bifurcation of the proceeding. U S WEST has not demonstrated that there are any benefits to bifurcating the proceeding. However, bifurcation will place additional demands on the intervenors' resources. Furthermore, bifurcation creates a number of procedural complexities that can be avoided by not bifurcating the proceeding. The Hearing Officers should deny U S WEST and Staff's joint proposal to bifurcate the proceeding. If the Hearing Officers order bifurcation, AT&T recommends it be done in accordance with its comments.

DATED this 3rd day of September, 1999.

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T's Statement of Positions and Bifurcation regarding Docket No. T-00000B-97-0238, were sent via overnight delivery this 3rd day of September, 1999, to:

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Docket Control – Utilities Division
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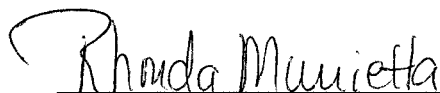
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